

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
NEVADA SHARED RADIO SYSTEM )  
 )  
Request for Waiver of Section 90.179 of the )  
Commission's Rules )

**ORDER**

**Adopted: December 15, 2022**

**Released: December 15, 2022**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau

**I. INTRODUCTION**

1. The Nevada Shared Radio System (NSRS), a cooperative 800 MHz radio system, requests a waiver of section 90.179(a) of the Commission's rules to enable limited shared use of 700 MHz narrowband public safety channels by utility users, Nevada Power and the Sierra Pacific Power Company (Sierra Pacific).<sup>1</sup> NSRS requests a waiver since utilities are typically ineligible to license public safety spectrum. For the reasons stated below, we find the utilities' proposed use of 700 MHz narrowband public safety channels, consistent with the eligibility criteria in Section 337(f)(1) of the Communications Act of 1934, as amended (the Act), and section 90.523(b) of the Commission rules.<sup>2</sup>

**II. BACKGROUND**

2. Nevada Power and the Sierra Pacific currently utilize the NSRS 800 MHz radio system pursuant to a waiver.<sup>3</sup> The 1995 waiver imposes certain requirements, including NSRS obtaining approval from the relevant Regional Planning Committee (RPC) prior to using 800 MHz "NPSPAC" channels.<sup>4</sup> The 1995 waiver does not include 700 MHz channels, as the usage of this spectrum was not contemplated at that time.<sup>5</sup> NSRS states that the system has operated as intended and that the system

<sup>1</sup> See Letter from Alan S. Tilles, Esq. to John A. Evanoff, Chief, Policy and Licensing Division (Sept. 28, 2022) (Request). See also 47 CFR § 90.179(a) (this section allows for sharing of frequencies only if the licensee proposing shared use would be eligible for an authorization for the proposed frequency.)

<sup>2</sup> See 47 U.S.C. § 337(f)(1) (limiting the allocation of 700 MHz channels to "public safety services"); 47 CFR § 90.523(b) (prescribing the requirements for a nongovernmental organization to hold an authorization for a system operating in the 769-775 MHz and 799-805 MHz frequency bands).

<sup>3</sup> Request at 1 (*citing* Letter from Michael J. Regiec, Deputy Chief, Land Mobile Branch, to Karen Kavanau, Director, State of Nevada (July 10, 1995) (1995 Waiver)). The United States Department of Energy is also authorized to utilize the system under this waiver. In addition to the 800 MHz call signs covered by the 1995 waiver, Washoe County, Nevada (Washoe County), and the Nevada Department of Transportation (NDOT) also have individual 700 MHz public safety narrowband call signs.

<sup>4</sup> 1995 Waiver at 2 (requiring, among other things, that 800 MHz public safety spectrum may not be used for commercial service; restricting use to official activities; and requiring the state to maintain authorization and responsibility for compliance with all rules concerning construction and operation). NPSPAC channels refer to National Public Safety Plan Advisory Committee 800 MHz channels subject to RPC plans. See 47 CFR § 90.617.

<sup>5</sup> Request at 2.

provides “much needed communications and coordination amongst the various public safety and energy entities throughout the State, while eliminating redundant infrastructure (particularly costly in the State’s many rural/desert areas).”<sup>6</sup> However, NSRS states that the 800 MHz radio system uses antiquated technology that is no longer manufacturer supported. As such, NSRS seeks to upgrade its system to a Standards-Based Project 25 (P25) Phase II architecture, which will require replacement of the entire system’s infrastructure.<sup>7</sup> In 2017, Nevada Power, Sierra Pacific, Washoe County and the NDOT, entered into a Shared Radio System Contract, which authorized Washoe County to enter into agreement to effectuate the system upgrade.<sup>8</sup>

3. In creating a plan for the upgrade, NSRS sought to maximize available 800 MHz spectrum already allocated to NSRS, however, it requires more channels to remain viable, given changes in radio system use and subscriber base growth.<sup>9</sup> In locating potential expansion channels, NSRS determined that more 700 MHz narrowband public safety channels were available for incorporation into the upgraded system, compared with the limited number of 800 MHz channels.<sup>10</sup> NSRS therefore is requesting authorization for utilities Nevada Power and Sierra Pacific to share use of its members’ 700 MHz narrowband public safety channels as part of the upgraded system.

4. In support of the instant request, NSRS includes a letter of consent from the relevant 700 MHz RPC to incorporate such channels into its system.<sup>11</sup> Specifically, the Region 27 (Nevada) 700MHz and 800 MHz RPC supports the NSRS request to enable the ability of “NV Energy to have access to the 700 MHz public safety spectrum being added as part of the NSRS system replacement/upgrade.”<sup>12</sup>

5. NSRS concedes the Bureau lacks the authority to waive the requirements of Section 337(f)(1) of the Act, which limits the allocation of these 700 MHz public safety channels to “public safety services” as defined therein, “according to the terms and conditions established by the Commission.”<sup>13</sup> However, NSRS notes that the Bureau has previously found that other similarly positioned utility operations were providing services consistent with Section 337(f)(1)(B), as a nongovernmental organization, authorized by an appropriate governmental entity, providing “public safety services.”<sup>14</sup>

6. NSRS has amended the 2017 NSRS Contract, to ensure that its procedures are consistent with the Bureau’s prior decisions, and NSRS and its partners have agreed to limit Nevada Power and Sierra Pacific’s use of 700 MHz spectrum to the following:

“Permitted uses of the NSRS public safety radio frequencies are defined below and NVE, specifically, shall only use the 700 MHz spectrum as defined:

- a. Mission-critical communications essential for Public Safety Officials to conduct the daily operations of law enforcement, fire protection, and emergency medical services, and to provide maintenance and operation of critical

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<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.*; Washoe County Staff Report, Board Meeting (July 14, 2015), attached to the Request.

<sup>8</sup> Request at 1-2; Nevada Shared Radio System Contract No. NM117-17-016 (May 9, 2017) (2017 NSRS Contract), attached to the Request.

<sup>9</sup> Request at 2.

<sup>10</sup> *Id.*

<sup>11</sup> See Letter from Melissa Lawney – RPC Region 27 Chair to “To Whom it May Concern” (Oct. 2021).

<sup>12</sup> *Id.* Certain 700 MHz public safety narrowband channels are subject to RPC plans. See 47 CFR §§ 90.527, 90.531. We note that both Nevada Power and Sierra Pacific do business as Nevada Energy (NVE).

<sup>13</sup> 47 U.S.C. §§ 337(a)(1), (f)(1)(A)-(B).

<sup>14</sup> Request at 2 citing 47 U.S.C. § 337(f)(1)(B), *State of Ohio and FirstEnergy Corp.*, Order, 31 FCC Rcd 8758 (PSHSB 2016) (*State of Ohio*) and *Middle Tennessee Electric Membership Corporation*, Order, 34 FCC Rcd 2455 (PSHSB 2019) (*Middle Tennessee*).

transportation and utility infrastructure.

b. Mission-critical communications essential for Public Safety Officials to respond to unplanned and emergency events and restore operations of critical transportation and utility infrastructure.

c. Provide timely emergency notifications necessary and essential to assure the safety and protection of property, imminent threats to persons or infrastructure, and other hazardous conditions.

d. Communication relating to the energization, de-energization, or reconfiguration of electric transmission lines, distribution lines, and substations, including the coordination of these activities, and other uses directly related to the protection of property or safety of Public Safety Officials and the general public.”<sup>15</sup>

7. NSRS believes that they have fully satisfied the Commission’s criteria for granting similar waivers in the past, and states that the public interest would be served by a finding that the operation of Nevada Power and Sierra Pacific on 700 MHz public safety channels, implemented as part of the NSRS system upgrade, is consistent with Section 337(f)(1)(B) of the Act.<sup>16</sup>

### III. DISCUSSION

8. The requirements of Section 337(f)(1) of the Act limits the allocation of 700 MHz public safety channels to “public safety services” as defined therein, “according to the terms and conditions established by the Commission”<sup>17</sup> and we have no authority to waive them. Further, section 90.523(b) implements Section 337(f)(1) of the Act. Specifically, to be eligible to use 700 MHz public safety channels under section 90.523, a nongovernmental organization must provide a detailed showing that, among other things, the organization provides services, the sole or principal purpose of which are to protect the safety of life, health, or property; and that it will use the spectrum solely for transmission of communication essential to providing such services.<sup>18</sup> We find that Nevada Power and Sierra Pacific’s proposed use of 700 MHz public safety channels complies with the terms of Section 337 of the Act, section 90.523(b) of the Commission’s rules, and our prior precedent.

9. First, the 2021 NSRS Contract provides that Nevada Power and Sierra Pacific will limit their use of the 700 MHz portion of the NSRS system to mission critical communications and to communications related to incidents involving electricity distribution in ways that protect the health of its workers and the general public and the safety of property. We find these limitations sufficient and consistent with our rules.

10. We also find that the proposed operation is consistent with our decisions in *State of Ohio*. and *Middle Tennessee*, in which, based on similar contractual undertakings, we approved shared use of 700 MHz facilities licensed to eligible entities.<sup>19</sup> In *State of Ohio*, the Bureau found that the public safety entity may share its 700 MHz public safety narrowband spectrum with its utility partner because the

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<sup>15</sup> Request at 2-3 citing Nevada Shared Radio System Contract No. NM117-17-016 (July 13, 2021) (2021 NSRS Contract).

<sup>16</sup> Request at 3.

<sup>17</sup> 47 U.S.C. § 337(a)(1). Under Section 337 of the Act, public safety services are services “the sole or principal purpose of which is to protect the safety of life, health, or property” that are provided by “State or local government entities” or by “nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services,” and that are “not made commercially available to the public by the provider.” 47 U.S.C. §§ 337(f)(1)(A)-(C).

<sup>18</sup> 47 CFR § 90.523(b).

<sup>19</sup> See generally *State of Ohio* and *Middle Tennessee*.

utility, when operating on the public safety 700 MHz channels, provided services consistent with Section 337(f)(1)(B), as a nongovernmental organization, authorized by an appropriate governmental entity, providing “public safety services.” The utility’s use of 700 MHz public safety channels was limited to services such as communications necessary and essential to respond to or restore power outages and system restoration, emergency notifications necessary and essential to the safety of employees and the public and to protection of property, and the energization and de-energization or reconfiguration of electric transmission lines.<sup>20</sup>

11. Similarly, in *Middle Tennessee*, the Bureau found that a public safety entity could share its 700 MHz public safety facilities with a utility provided that the utility operated on the public safety system’s 700 MHz channels under certain limitations. The utility agreed to conduct its electrical distribution communications on the public system to ensure that it responds to incidents involving electricity distribution in ways that protect the health of its workers and the general public and the safety of property.<sup>21</sup> We also concluded, that the utility was eligible to use the 700 MHz public safety channels on a secondary, preemptible basis and that, as such, the utility’s request for waiver regarding the 700 MHz public safety channels was moot.

12. Based on record and our precedent, we conclude that Nevada Power and the Sierra Pacific are eligible to use 700 MHz public safety channels on a secondary, preemptible basis. This finding is conditioned on Nevada Power and Sierra Pacific confining their communications on the 700 MHz portion of the NSRS system, to those related to “public safety services” as described herein. If NSRS seeks to share its 700 MHz facilities with any other non-governmental entity, it must first receive approval from the Public Safety and Homeland Security Bureau. We limit this finding to the specific parties before us and we do not authorize NSRS to share its 700 MHz facilities (call signs WQWI698 and WPUC245) with any other utility user.

#### IV. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED, that pursuant to Sections 4(i), 303(r) and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 337, and Sections 1.925, and 90.179(a) of the Commission’s rules, 47 CFR §§ 1.925 and 90.179(a), the request for relief is GRANTED as conditioned *supra*; and the Waiver Request is DISMISSED as moot.

14. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission’s rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

John A Evanoff  
Chief, Policy and Licensing Division  
Public Safety and Homeland Security Bureau

<sup>20</sup> *State of Ohio*, 31 FCC Rcd 8758, 8763 para. 17.

<sup>21</sup> *Middle Tennessee*, 34 FCC Rcd 2455. The public safety entity retained control over the system’s facilities and the utility’s use of the system did not affect the total daily capacity or availability of the system.